



C.M.A.Nos.3274 & 3275 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.Nos.3274 & 3275 of 2017
and Cross Objection No.112 of 2022
in C.M.A.No.3274 of 2017
and C.M.P.Nos.20492 & 20493 of 2017

C.M.A.No.3274 of 2017

Royal Sundaram Alliance Insurance Company Limited,
3rd Floor, Subramaniam Building,
No.1, Club House Road,
Chennai – 600 002.

...Appellant/3rd respondent

-Vs-

1.Thilagavathi
2.Mohanapriya [Minor], D/o.Late.Bakthavathsalu
3.Hithaishree [Minor], D/o.Late.Bakthavathsalu
[Respondents 2 & 3 Minors Rept. By Mother & NF 1st respondent]
4.Chandra ...Respondents 1 to 4/Petitioners
5.N.Tamilselvan
6.K.Tamilselvi
7.Usharani
8.B.Sruthi
9.B.Preethi ...Respondents 5 to 9/
Respondents 1, 2 & 4 to 6



C.M.A.Nos.3274 & 3275 of 2017

C.M.A.No.3275 of 2017

Royal Sundaram Alliance Insurance Company Limited,
3rd Floor, Subramaniam Building,
No.1, Club House Road,
Chennai – 600 002.

...Appellant/3rd respondent

-Vs-

1.Lakshmi
2.Karthiga
3.Chithra[Minor], D/o.Late.Bakthavathsalam,
[3rd respondent Minors Rept. By
Mother & NF 1st respondent]
4.N.Tamilselvan
5.K.Tamilselvi

...Respondents 1 to 4/Petitioners

...Respondents 4 & 5/
Respondents 1 & 2

Cross Objection No.112 of 2022
in C.M.A.No.3274 of 2017

Royal Sundaram Alliance Insurance Company Limited,
3rd Floor, Subramaniam Building,
No.1, Club House Road,
Chennai – 600 002.

...3rd respondent/ Appellant

-Vs-

1.Thilagavathi
2.Mohanapriya [Minor], D/o.Late.Bakthavathsalu
3.Hithaishree [Minor], D/o.Late.Bakthavathsalu
[Respondents 2 & 3 Minors Rept. By Mother & NF 1st respondent]
4.Chandra
5.N.Tamilselvan
6.K.Tamilselvi
7.Usharani
8.B.Sruthi
9.B.Preethi

...Petitioners 1 to 4/ Respondents 1 to 4

...Respondents 5 to 9/
Respondents 1, 2 & 6 to 9



C.M.A.Nos.3274 & 3275 of 2017

Prayer in C.M.A.No.3274 of 2017:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 25.04.2017, in M.C.O.P.No.280 of 2013 on the file of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri.

Prayer in C.M.A.No.3275 of 2017:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 25.04.2017, in M.C.O.P.No.281 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

Prayer in Cross Objection No.112 of 2022 in C.M.A.No.3274 of 2017:- Cross Objection filed under Order 41 Rule 22 of CPC 173 of the Motor Vehicles Act, 1988, against the judgment and decree, dated 25.04.2017, in M.C.O.P.No.280 of 2013 on the file of the Motor Accidents Claims Tribunal, Special District Court, Krishnagiri.

C.M.A.No.3274 of 2017:-

For Appellant	: Mr.E.Rajadurai for M/s.M.B.Gopalan Associates
For R1 to R4	: Mr.S.P.Yuvaraj

C.M.A.No.3275 of 2017:-

For Appellant	: Mr.E.Rajadurai for M/s.M.B.Gopalan Associates
For R1 to R3	: Mr.S.P.Yuvaraj



C.M.A.Nos.3274 & 3275 of 2017

Cross Objection No.112 of 2022
in C.M.A.No.3274 of 2017:-

For Appellant : Mr.S.P.Yuvaraj
For R1 : Mr.E.Rajadurai
for M/s.M.B.Gopalan Associates

COMMON JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

These two appeals arise out of the common order of the Motor Accident Claims Tribunal, Special District Court, Krishnagiri in M.C.O.P.Nos.280 and 281 of 2013 dated 25.04.2017.

2.Brief facts that are necessary for the disposal of these two appeals are as follows:

3.The claimants in M.C.O.P.No.280 of 2013 are the 2nd wife, two minor children and mother late Bakthavathsalu and the claimants in M.C.O.P.No.281 of 2013 are the wife and the children of late Bakthavathsalam. In both cases the breadwinner of the respective family died as a result of accident on 18.03.2010.



C.M.A.Nos.3274 & 3275 of 2017

4.It is the specific case of the claimants that the deceased by name, Bakthavathsalu along with one pillion rider by name, Bakthavathsalam, travelled in a two wheeler bearing Registration No. KA 05 EK 8133 from Vilupuram towards Hosur . It is admitted that the two wheeler was hit by the Tata LPT cement tanker vehicle bearing registration No.TN 28 AA 5960 driver in a rash and negligent manner. As a result of the accident both the driver and pillion rider of the two wheeler have sustained fatal injuries.

5.In both the appeals, the learned counsel appearing for the appellant/ Insurance Company Limited submitted that the appeal is only regarding the quantum of compensation as well as the involvement of the vehicle. The learned counsel appearing for the appellant/Insurance Company further submitted that the Tribunal failed to adopt proper multiplier. The learned counsel appearing for the appellant/Insurance Company submitted that the age of the deceased as on the date of accident was wrongly shown as 48 years in the driving license. The learned counsel further relied upon the ration card to show that the age of the deceased at the time of accident was 54 years. Since the appellant has admitted 11 as proper multiplier and the Tribunal has also adopted 11 as multiplier in both cases, this Court find the issue regarding age of victim in both cases assume no significance. Hence the award of Tribunal fixing 11 as multiplier is accepted.



C.M.A.Nos.3274 & 3275 of 2017

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6.The Tribunal has extensively considered the involvement of the vehicle insured with the appellant and held that the vehicle belongs to respondents 1 and 2 in the claim petition caused the accident. The Inspectors of Police were examined as P.W.3 and P.W.4. Exs.P1 to P14 were marked on claimants' side. Respondents 1 and 2 in the claim petition remained ex parte in both the cases. Therefore, this Court confirms the findings of Tribunal and hold that the appellants are liable.

7.The learned counsel appearing for the respondents/claimants submitted that the Tribunal has rightly relied upon the driving license of the deceased based on the statement of declaration made by the deceased for getting ration card. The claimant who is the 2nd wife of the deceased Bakthavathsalu filed the cross appeal in C.M.A.No.3274 of 2022 as no compensation was awarded to her.

8.In view of the admitted facts and circumstances of the case, this Court finds that the cross appellant, the 2nd wife of the deceased Bakthavathsalu is not entitled to get compensation. It is admitted that the marriage of cross appellant was during the subsistence of first marriage with 4th respondent in M.C.O.P.No.280 of 2013.



C.M.A.Nos.3274 & 3275 of 2017

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9. The only point to be considered in these appeals are regarding the quantum of compensation. This Court is of the view that the age of the deceased is relevant. However in both cases, the claimants have not seriously disputed the multiplier adopted by Tribunal. The claimants have produced the driving license. The driving license may not be an authentic document as it is the entry on the basis of the information furnished by the person who takes the license without producing the birth certificate.

10. This Court is unable to accept the case of the respondents that the age of the deceased was 48 years as indicated in the driving license. The Tribunal has awarded compensation rightly by adopting multiplier as 11. It is contended before this Court that the Tribunal has deducted $\frac{1}{3}$ instead of $\frac{1}{5}$. In this case, the claimants 2 and 3 are the children of the deceased Bakthavathsalu through the 2nd wife. Similarly respondents 4 to 6 are 1st wife and children of the deceased Bakthavathsalu. Respondents 2, 3 and 4 as well as respondents 4 to 6 are entitled to the compensation before the Tribunal as they are dependents. Hence deduction should be $\frac{1}{5}$.



C.M.A.Nos.3274 & 3275 of 2017

11.The Tribunal specifically rendered a finding that the accident was caused due to the rash and negligent driving of the lorry insured with the appellant. Since the Tata Cement Tanker Lorry bearing registration No.TN 28 AA 5960 involved in the accident was confirmed by the Tribunal based on facts and materials placed before the Tribunal. This Court has no hesitation to confirm the Award of the Tribunal regarding the liability as well as the involvement of the vehicle insured with the appellant. The Tribunal awarded a compensation of Rs.23,16,440/- to all the legal heirs of the deceased Bakthavathsalu.

12.Though quantum of compensation is disputed, this Court is not inclined to reduce the amount that was taken as monthly income of the deceased at the time of the accident occurred in 2010. This Court is unable to accept the Award taking 50% towards future prospects and by adopting 1/3 as deduction.

13.Further, it is admitted before the Tribunal that the monthly income of the deceased was Rs.14,671/- as per the salary certificate. Having regard to the age of the deceased, 30% can be added towards future prospects and the deduction towards personal expenses is fixed at 1/5. Therefore the actual income of the deceased has arrived at Rs.1,83,096/-. Adopting multiplier 11, the claimants are entitled to Rs.22,01,456/-. The claimants are entitled to Rs.40,000/- towards loss



C.M.A.Nos.3274 & 3275 of 2017

of consortium and further sum of Rs. 2,00,000/- towards love and affection Rs.15,000/- can be allowed towards funeral expenses. Towards loss of estate and transport can be granted at Rs.15,000/- and Rs.5,000/- respectively. As a result, the claimants 2 to 4 and respondents 4 to 6 are entitled to the compensation of Rs. 22,89,000/-.

14. There is no serious objection from the learned counsel appearing for the contesting respondent in C.M.A.No.3274 of 2017.

15. In appeal C.M.A.No.3275 of 2017 both the learned counsels are unable to point out any irregularity and illegality in the Award of the Tribunal fixing the compensation of Rs.11,72,000/-. This Court finds no merit in the appeal and the learned counsel appearing for the appellant is unable to demonstrate before this Court and the Award of the Tribunal is vitiated. Since the entitlement of the claimants may not be seriously disputed. This Court is not inclined to interfere with the order.

16. The cross objection is liable to be dismissed as the compensation awarded by the Tribunal is more than the amount payable to the claimants. This Court modifies the compensation awarded by the Tribunal in M.C.O.P.No.280 of



C.M.A.Nos.3274 & 3275 of 2017

2013. Considering all circumstances, this Court is inclined to hold that the claimants 2 to 4 and respondents 4 to 6 are entitled to a compensation of Rs. 22,89,000/- in M.C.O.P.No.280 of 2013. Hence, C.M.A.No.3274 of 2017 is partly allowed by reducing the compensation from Rs.23,16,440/- to Rs.22,89,000/-

17. Therefore, the C.M.A.No. 3275 of 2017 and Cross Objection No.112 of 2022 in C.M.A.No.3274 of 2017 are dismissed. Accordingly, the Civil Miscellaneous Appeal in C.M.A No. 3274 of 2017 is partly allowed and the award of the Tribunal is modified to the extent indicated above. The claimants 2 to 4 and respondents 4 to 6 in M.C.O.P.No.280 of 2013 are entitled to a sum of Rs.22,89,000/- [Rupees Twenty Two Lakhs and Eighty Nine thousand only]. No costs. Consequently, connected miscellaneous petitions are closed.

[SSSRJ] [AANJ]
01.02.2023

cda
Index : Yes/No



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C.M.A.Nos.3274 & 3275 of 2017

To

The Special District Court,
(Motor Vehicle Accident Claims Tribunal),
Krishnagiri.



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C.M.A.Nos.3274 & 3275 of 2017

S.S.SUNDAR, J.,

AND

A.A.NAKKIRAN, J.,

cda

C.M.A.Nos.3274 & 3275 of 2017

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